

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

MARIANO MALDONADO-PAGAN,  
et al.,

Plaintiffs,

v.

EL BANCO FIRST BANK (PUERTO  
RICO),

Defendant.

Civil No. 07-1102 (JAF)

**OPINION AND ORDER**

Plaintiffs Mariano Maldonado-Pagán ("Pagán") and his son, Mario Maldonado-Vázquez, bring this pro-se action against Defendant El Banco First Bank Puerto Rico alleging violations of the Puerto Rico Constitution, the general principles of Puerto Rico law, and federal banking laws. Docket Document No. 1-1. Plaintiffs seek money damages to compensate for unfair banking charges and conditions imposed on Plaintiff Pagán, an inmate at a Puerto Rico correctional facility. Id. Defendants move to dismiss Plaintiffs' suit pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(b)(7). Docket Document No. 25. The motion is unopposed.

**I.**

**Factual and Procedural Synopsis**

\_\_\_\_ We derive the following factual summary from Plaintiffs' complaint. Docket Document No. 1-1. As we must, we assume that all

Civil No. 07-1102 (JAF)

-2-

1 Plaintiffs' allegations are true and make all reasonable inferences  
2 in their favor. Alternative Energy, Inc. v. St. Paul Fire and Marine  
3 Ins., Co., 267 F.3d 30, 36 (1st Cir. 2001).

4 Plaintiff Pagán is an inmate at a correctional facility in  
5 Ponce, Puerto Rico. Defendant provides banking services to inmates  
6 of that institution. Defendant charges inmates two dollars and ten  
7 cents for three books of deposit slips and one dollar for each  
8 deposit into an account. Defendant limits single deposits to \$100.  
9 Defendant does not pay inmates interest on the money held in their  
10 accounts.

11 Plaintiffs allege that the aforementioned charges and conditions  
12 violate the Puerto Rico Constitution's provision that "all men are  
13 equal before the law" and its prohibition against discrimination  
14 based on race, color, sex, birth, social origin or condition, or  
15 political or religious ideas. Docket Document No. 1-1; P.R. Const.  
16 Art. II, § 1 (2004). Plaintiffs also claim that these policies and  
17 practices violate the general principles of Puerto Rico law and the  
18 federal laws governing banks. Docket Document No. 1-1.

19 Plaintiffs filed their complaint on February 5, 2007. Docket  
20 Document No. 1-1. Defendant moved to dismiss the complaint on May 3,  
21 2007. Docket Document No. 25. Plaintiff Pagán moved the court to  
22 appoint counsel on May 9, 2007, Docket Document No. 38. The court  
23 denied said request on May 15, 2007, and, on May 24, 2007, Plaintiff

Civil No. 07-1102 (JAF)

-3-

1 again asked the court to appoint counsel, Docket Document No. 40.  
2 This second motion to appoint counsel is still pending before this  
3 court.

## 4 II.

### 5 Motion to Dismiss Standard under Rule 12(b)(1)

6 Under Rule 12(b)(1), a defendant may move to dismiss an action  
7 for lack of federal subject matter jurisdiction. See FED. R. CIV.  
8 P. 12(b)(1) (1992 & Supp. 2004). The party asserting jurisdiction  
9 has the burden of demonstrating its existence. See Skwira v. United  
10 States, 344 F.3d 64, 71 (1st Cir. 2003) (citing Murphy v. United  
11 States, 45 F.3d 520, 522 (1st Cir. 1995)). The court has "an  
12 obligation to inquire sua sponte into its own subject matter  
13 jurisdiction." McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004).

14 Rule 12(b)(1) is a "large umbrella, overspreading a variety of  
15 different types of challenges to subject-matter jurisdiction,"  
16 including ripeness, mootness, the existence of a federal question,  
17 diversity, and sovereign immunity. Valentin v. Hosp. Bella Vista,  
18 254 F.3d 358, 362-63 (1st Cir. 2001). A moving party may mount a  
19 "sufficiency challenge," taking the plaintiff's "jurisdictionally-  
20 significant facts as true" and requiring the court to "assess whether  
21 the plaintiff has propounded an adequate basis for subject-matter  
22 jurisdiction." Id. at 363. Alternatively, when the jurisdictional  
23 facts are distinct from the case's merits, a moving party can bring

Civil No. 07-1102 (JAF)

-4-

1 a "factual challenge," in which case the court addresses "the merits  
2 of the jurisdictional claim by resolving the factual disputes between  
3 the parties." Id. \_\_\_\_\_

### 4 **III.**

#### 5 **Analysis**

6 Plaintiffs allege that the charges and conditions imposed by  
7 Defendant for banking services violate the Puerto Rico constitution,  
8 the general laws of Puerto Rico, and federal banking laws that  
9 prohibit discrimination against individuals on the basis of their  
10 social status. Docket Document No. 1-1.

11 Defendant argues that (1) the court does not have subject matter  
12 jurisdiction over this case; (2) the facts do not state a claim upon  
13 which relief can be granted; and (3) Plaintiffs have failed to join  
14 an indispensable party, the Puerto Rico Department of Corrections.  
15 Docket Document No. 25. As subject matter jurisdiction is a  
16 threshold issue, we begin with an analysis of that argument. See  
17 Danca v. Private Health Care Sys., 185 F.3d 1, 4 (1st Cir. 1999).

18 Because Plaintiffs are pro se, we construe the complaint more  
19 favorably than we would pleadings drafted by an attorney. Haines v.  
20 Kerner, 404 U.S. 519, 520 (1972); Ayala Serrano v. Lebron Gonzalez,  
21 909 F.2d 8, 15 (1st Cir. 1990). Plaintiffs' pro se status, however,  
22 does not insulate them from complying with procedural and substantive  
23 law. Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997).

Civil No. 07-1102 (JAF)

-5-

1 Defendant argues that this case must be dismissed for lack of  
2 subject matter jurisdiction. Docket Document No. 25. Subject matter  
3 jurisdiction may be grounded in either diversity jurisdiction or  
4 federal question jurisdiction. 28 U.S.C. §§ 1331, 1332 (2007).  
5 Although Plaintiffs do not allege the citizenship of the parties to  
6 this suit in their complaint, we assume that all parties are citizens  
7 of Puerto Rico. We, accordingly, do not have diversity jurisdiction  
8 over this case. 28 U.S.C. § 1332 (requiring that a controversy be  
9 between parties of different states or between citizens of a state  
10 and citizens of a foreign state for jurisdiction based on diversity  
11 of citizenship). We now determine whether we have federal question  
12 jurisdiction over this matter.

13 Plaintiffs allege that federal banking laws prohibit  
14 discrimination on the basis of social conditions, such as  
15 incarceration. Docket Document No. 1-1. Plaintiffs do not, however,  
16 cite to any such law, nor are we aware of one. Id. Because we are  
17 unable to identify a specific federal law under which Plaintiffs  
18 could bring this case, we find that we do not have federal question  
19 jurisdiction over this matter. 28 U.S.C. § 1331 (granting district  
20 courts original jurisdiction over "all civil actions arising under  
21 the Constitution, laws, or treaties of the United States").

22 Without grounds for jurisdiction over this case, we must dismiss  
23 it in its entirety. We, therefore, do not reach Defendant's arguments  
24 for dismissal pursuant to Federal Rules of Civil Procedure 12(b)(6)

Civil No. 07-1102 (JAF)

-6-

1 and 12(b)(7). We also deny Plaintiffs' motion to appoint counsel,  
2 Docket Document No. 40, as moot. We note that this dismissal does  
3 not bar Plaintiffs from bringing a similar suit in Commonwealth  
4 court.

5 **IV.**

6 **Conclusion**

7 For the reasons stated herein, we **GRANT** Defendant's motion to  
8 dismiss, Docket Document No. 25, and **DISMISS** Plaintiffs' complaint  
9 for lack of subject matter jurisdiction under Federal Rule of Civil  
10 Procedure 12(b)(1), with prejudice. In addition, we **DENY** Plaintiffs'  
11 motion to appoint counsel, Docket Document No. 40, as moot.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 18<sup>th</sup> day of June, 2007.

14 s/José Antonio Fusté  
15 JOSE ANTONIO FUSTE  
16 Chief U. S. District Judge